IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.611 OF 2005

IN

FIRST APPEAL NO.831 OF 2001.

Chief Executive Officer & Anr. : Applicants.

versus

K.S.Valsan : Respondent.

Mr.P.P.Chawan for the applicants.

Mr.S.M.Kazi for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 3rd March 2005.

ORAL ORDER

1. This is an application filed by the applicants, who are the original appellants, under Order 41 Rule 27 of the Code of Civil Procedure for permission to produce additional evidence. It is the case of the applicants that the plaintiff/respondent had relied upon a

particular certificate issued by the officer of the appellant and had produced the original of the said certificate. That certificate was exhibited as Exhibit 94 before trial Court and the Court based some of its conclusion on Exhibit 94 and came to the conclusion against the Zilla Parishad.

. Counsel for the applicants contended that, after verification, it was found that Exhibit 94 that was produced and proved was not as per the office copy i.e. the carbon copy of the original. In the last column of Exhibit 94, i.e. Column 10, under Remarks Heading, what is written in Exhibit 94 is "work is complete". He contended that a perusal of Exhibit 94 will show that the word is written with stress and emphasis and, it appears to be over writing. He contended that in the office copy of Exhibit 94 in possession of the Zilla Parishad what is the Remarks is "work incomplete". The word "work incomplete" is altered and changed to "work is complete" and, therefore, in these circumstances, it is necessary that the appellant be permitted to produce additional evidence on record.

2. The application is opposed by the counsel for the respondent. He contended that this document Exhibit 94 was put up to the witness of the Zilla Parishad Basappa Banad during the trial and this witness, when Exhibit 94 was shown to him, saw the document and admitted that Exhibit 94 was bearing the signature of Executive Engineer. The witness identified the signature and stated that the certificate was issued by their department and it was written in it that work is complete. The counsel for the respondent, therefore, contended that if the wintess of the Zilla Parishad on oath has stated that as to what was the effect and contents of the said certificate Exhibit 94, then now at this stage the appellants cannot be permitted to contradict their own statement and stand. Therefore, according to hi, the application should be rejected.

3. I do not find that the application deserves to be rejected. It may be that the said witness has given his statement about the nature of the document Exhibit 94, but what were to be the objections, the court must get an opportunity to find out the truth. In Exhibit 94, which is

original, when there is over writing of the nature, as specified by me, then the Court is entitled to know what was the exact, correct and proper Remarks and this can only be ascertain from the office copy of Exhibit 94, which is now the appellants are trying to tender before the Court. The office copy i.e. the xerox copy is supplied to the Court clearly shows that in column 10 it is written "work incomplete". The date of this document Exhibit 94 is 10.8.1994. In view of this, the application is required to be allowed and it is allowed. The appellants are permitted to produce, file and rely upon the office copy of Exhibit 94. Since the office copy is now only the copy left with the appellants, they will retain the same and will produce it at the time of arguments. Civil application is disposed.

[D.G.DESHPANDE]

03/03/2005 JUDGE.